

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WP NO.19275 OF 2004

13-11-2007

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Between:

Masab Tank Service Station,
rep. by its Managing Partners.

....Petitioners

And :

The District Collector, Hyderabad and others

...Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WP NO.19275 OF 2004

ORAL ORDER:

Heard Sri Mayur Reddy, the learned counsel appearing for Harender Pershad the learned counsel for the petitioner, Sri R.Mahender Reddy for the 4th respondent and the learned Government Pleader for Revenue for 1st and 2nd respondents. Except the 4th respondent who has filed a counter-affidavit along with an application for vacation of the interim order dated 14-10-2007, none of the other respondents have filed responses to the writ petition.

In substance, the petitioners seek a direction to the 3rd respondent to requisition the 1st respondent to acquire the site under the occupation of the petitioners under the provisions of the Land Acquisition Act, 1894 for the purpose of enabling continuance of the petitioners' business as dealers of petroleum products under the name and title of Ms. Masab Tank Service Station.

The first petitioner's father and the husband of the 3rd petitioner were originally appointed as dealers by the 3rd respondent in 1973 for MS/HSD outlet. On the death of the first petitioner's father, the first petitioner's mother and husband of the 3rd petitioner continued as partners in 1982. In 1983 the 3rd petitioner's husband expired and thereafter the first petitioner's mother and the 3rd petitioner were inducted as partners with the reconstitution of the firm and are running the business since 1992 on the reconstituted format.

By a letter dated 12-10-1992 the 2nd respondent issued a notice under Section-7 of the A.P. Land Encroachment Act, 1905 (for short "the Act") intimating that the land admeasuring 365 square meters in Sy.No.26, Ward No.37, Block-F is Government land; has been encroached by the petitioners herein; and that they would therefore be evicted by following the procedure

under Section.6 of the Act. The petitioners responded on 22-10-1992 informing the 2nd respondent that they are dealers appointed by the 3rd respondent and in respect of any action proposed, the 3rd respondent should be put on notice. The 3rd respondent responded to the 2nd respondent on 15-10-1992 claiming that the petroleum outlet is being pursued under a valid lease and therefore they cannot be evicted under the provisions of the Act. On 16-08-1994 the petitioners requested the 3rd respondent to initiate appropriate proceedings to obtain stay of eviction and also to acquire the land.

It would appear that the 4th respondent filed O.S.No.270 of 2003 on the file of the VII Additional Junior Civil Judge, City Civil Court, Hyderabad seeking eviction of the 3rd respondent as the lease in favour of the 3rd respondent had expired. Neither the State nor the petitioners are parties to the suit. Only the 3rd respondent is impleaded as a defendant in the suit. The learned counsel for the petitioner and the learned counsel for the 4th respondent urge that the suit was decreed on 14-10-2004. The 3rd respondent preferred an appeal AS No.562 of 2004 on the file of the XII Additional Chief Judge, City Civil Court, Hyderabad, which is pending.

On the above substratum of facts, the petitioners seek a creative relief, namely a direction to the 3rd respondent to petition the 1st respondent for acquiring the land on which they pursue business as dealers in petroleum products under the 3rd respondent.

The relief sought is misconceived simplicitor. The 3rd respondent is an instrumentality of the State. The entitlement of the petitioners to continue as dealers is contingent upon a

dealership granted and continued by the 3rd respondent. The petitioners have no contractual privity in respect of the land in question as the right to user of this property vests in the 3rd respondent under the terms of a lease entered into between the 3rd and 4th respondents.

Whether the lease in favour of the 3rd respondent executed by the 4th respondent has expired is not an issue over which the petitioners have any locus, that is a matter between the respondents 3 and 4. This aspect is also the subject matter of A.S.No.562 of 2004.

The State Government and its agencies have initiated proceedings under the provisions of the Act against the petitioners and the 3rd respondent Corporation, on the ground that the land is government property and the petitioners have encroached upon it. The petitioners are in occupation of the land pursuant to the license/agreement between the petitioners and the 3rd respondent. If the 3rd respondent has no lawful or legitimate right to continue in occupation of the property on the ground that the property is Government property and if the 3rd respondent is lawfully evicted, though constructively from the land pursuant to proceedings initiated under the Act, then the petitioners who have no independent right to possession of the property will loose that right along with the 3rd respondent. The petitioners in any event do not have any independent right to occupation of the property.

The petitioners neither assert nor demonstrate before this Court that the proceedings initiated by the State, by respondent Nos.1 and 2 under the provisions of the Act is patently incompetent or wholly without jurisdiction. This is not a writ of prohibition.

Whether the 3rd respondent-Corporation to safeguard its commercial interests and negotiate with the State Government for the property in question for lease or purchase of the property or to contest the proceedings initiated by the State under the provisions of the Act against it, is a choice wholly within the realm of the 3rd respondent. In any event the petitioner cannot seek a direction to the 3rd respondent to call upon the 1st respondent to acquire the property under the provisions of the Land Acquisition Act 1894 for the benefit of the 3rd respondent-Corporation, merely because it would be to the economic advantage of the petitioners.

The petitioners have not made out any case for grant of any of the reliefs sought in this writ petition. The writ petition is patently misconceived and is accordingly dismissed. The interim order dated. Stands dissolved. No order as to costs.

Justice GODA RAGHURAM

13TH NOVEMBER 2007
Pvsn/Tsnr